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Alfonso Morales
Chief of Police

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MuckRock News
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Somerville, MA 02144-2516

Dear Curtis Waltman:

This letter is in response to your public records request pursuant to the provisions of the Wisconsin Public Records Law (Wis. Stat. § 19.31-39). In your email dated October 18, 2017, you requested the following information:

- Threat assessments, field reports and intelligence updates which have focused on the following groups and an email search using the following keywords. (see attached request)

The public policy in this state is to give the public the greatest amount of access to public records as possible. Wis. Stat. § 19.32. The general presumption is that public records are open to the public unless there is a clear statutory or common law exception. If there is no clear statutory or common law exception the custodian must “decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure.” *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 28 (citations omitted.) Notwithstanding the presumption of openness, the public’s right to access to public records is not absolute. *Journal/Sentinel v. Agerup*, 145 Wis. 2d 818, 822 (Ct. App. 1988).

At this time your request is denied.

The Public Records Law states that the exemptions found in the Open Meetings Law may be used as an exception to disclosure under the Public Records Law if supported by public policy reasons. Wis. Stat. § 19.35(1)(a). One exception under the Open Meetings Law is when the information related to the consideration of strategies for crime detection or prevention. See Wis. Stat. § 19.85(1)(d).

Though FOIA does not apply to the state of Wisconsin, Wisconsin courts have relied on guidance from federal court analyses of FOIA interpretations, as persuasive authority, when making determinations on public records law exceptions. The Wisconsin Supreme Court has stated that the protections of police tactics found in the Federal Freedom of Information Act (FOIA) may provide a public policy reason, through the required balancing test, to limit disclosure of records that contain police tactics. *Linzmeier v. Forcey*, 254 Wis.2d 306, ¶32. Specifically, 5 U.S.C. 552(b)(7) exempts law enforcement records from disclosure when:

[t]he production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, . . . , (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if *329 such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

Id. (quoting 5 U.S.C. 552(b)(7)).

Put simply, “if local criminals learn the specific techniques and procedures used by police . . . the disclosed information could be used to circumvent the law.” *Democratic Party of Wisconsin and Cory Liebmann v. Wisconsin Department of Justice and Kevin Potter*, 2016 WI 100, ¶19.

After conducting the required balancing test, I have determined that the release of the redacted information would negatively impact the Milwaukee Police Department’s ability to detect crime relating to law enforcement sensitive emails, as public knowledge of these emails containing investigative information would have an impact on the Milwaukee Police Department’s strategies, methods and investigative techniques. Such disclosure could seriously impair and handicap the ability of Police Officers to function in an effective and efficient manner.

At this time, your request for an email search, threat assessments, field reports, and intelligence updates which focused on the listed groups in the attached request is denied because it involves law enforcement sensitive information and discussion related

to strategies for crime detection or prevention. See Wis. Stat. § 19.85(1)(d). However, if you would like to resubmit your request to exclude the denied information, MPD will reconsider the denial.

This determination is subject to review by *mandamus* action under Wis. Stat. § 19.37(1), or upon an application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

Sincerely,

ALFONSO MORALES
CHIEF OF POLICE


KERRY NAMIN
POLICE SERGEANT

AM:KN:sw
J04806 Response Letter